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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/696,311

10/29/2003

David Gaston

60015794-4

6568

7590

08/26/2004

HEWLETT-PACKARD COMPANY

Intellectual Property Administration

P. O. Box 272400

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EXAMINER

STEWART JR, CHARLES W

ART UNIT

PAPER NUMBER

2853

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/696,311	Applicant(s) GASTON ET AL.	
	Examiner Charles W. Stewart, Jr.	Art Unit 2853	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/3/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

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***Detailed Action***

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine ground in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 428, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-15 of U.S. Patent No. 6,669,322 B2.

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Gaston et al. discloses a method of calibrating ink ejection elements of an image forming device, said image forming device comprising a carriage supporting said ink ejection elements and an optical scanner, said method comprising:

With regards to claim 1, printing a test pattern (actually, a plurality of test patterns) onto a print medium with said ink ejection elements;

With regarding to claim 10, sensing said test pattern with said optical scanner by moving said optical scanner across said print medium in a scanning direction and scanning a substantial width of said test pattern in a single pass of said optical scanner;

With regards to claim 10, determining whether any of said ink ejection elements contains at least one defect based on said sensed test pattern; and

With regards to claim 2, calibrating said ink ejection elements determined to contain said at least one defect.

With regards to claim 5, wherein said test pattern sensing step further comprises scanning the width of said test pattern in a single pass of said optical scanner.

With regards to claim 6, converting said scanned test pattern into electronic data; and storing said electronic data prior to determining whether any of said ink ejection elements contain said at least one defect.

With regards to claim 13, analyzing said electronic data to determine whether any of said ink ejection elements contains at least one defect.

With regards to claim 14, wherein said step of printing said test pattern further comprises printing a plurality of test patterns by scanning said ink ejection elements over said print medium at various speeds.

With regards to claim 1, wherein said step of sensing said test pattern further

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comprises sensing each of said plurality of test patterns.

With regards to claim 9, wherein said step of determining whether any of said ink ejection elements contains said at least one defect further comprises comparing the sensed test patterns in relation to the speed the ink ejection elements were traveling during the printing of said test patterns.

With regards to claim 10, wherein said step of calibrating said ink ejection elements determined to contain at least one defect further comprises calibrating said ink ejection elements for various print modes.

It would have been obvious to one having ordinary skill in the art to compare the sensed test patterns in relation to the speed the ink ejection elements were traveling during the printing of said test patterns.

***Contact Information***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles W. Stewart, Jr. whose telephone number is (571) 272-2154.



Charles Stewart, Jr.

August 18, 2004



Stephen D. Meier  
Primary Examiner